

THOMAS C. WOODWARD

IBLA 78-71

Decided May 31, 1978

Appeal from decision of the Wyoming State Office rejecting application for extension of coal prospecting permit W-13798.

Affirmed.

1. Applications and Entries: Valid Existing Rights -- Coal Leases and Permits: Applications -- Coal Leases and Permits: Permits: Generally

Sec. 4 of the Federal Coal Leasing Amendments Act of 1975 removed the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under sec. 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

2. Coal Leases and Permits: Applications -- Coal Leases and Permits: Permits: Generally -- Mineral Leasing Act: Generally -- Secretary of the Interior

The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions, and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a

statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

APPEARANCES: Thomas C. Woodward, pro se; Lawrence G. McBride, Esq., Office of the Solicitor, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Thomas C. Woodward has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated October 7, 1977, rejecting his application for approval of an assignment to him of coal prospecting permit W-13798 on the ground that the coal prospecting permit had expired and that an application to extend it had been rejected.

Woodward is the assignee of an assignee, John Wold, from Page T. Jenkins, the permit extension applicant. In a decision also dated October 7, 1977, the State Office denied approval to Jenkins' request for extension of the permit. Jenkins had applied for an extension pursuant to section 2 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 201(b) (1970). Section 2 was further amended by the Federal Coal Leasing Act of 1975, 30 U.S.C.A. § 201(b) (West Supp. 1977).

Woodward contends that the rejection of his application was in error because the refusal to grant an extension to the permit was itself erroneous. We agree with the State Office that the permit had expired and that an extension cannot now be granted.

Permit W-13798 was issued on June 1, 1970, for a term of 2 years. An application for extension was filed on May 16, 1972. The application was suspended pending the determination of a "long-term" coal leasing policy by the Secretary. While it was pending, the Federal Coal Leasing Amendments Act of 1975, supra, was enacted on August 4, 1976. Section 4 of that act completely revised section 2 of the Mineral Leasing Act, supra, insofar as it dealt with permit extensions, "subject to valid existing rights." The revision repealed the Secretary's authority to issue prospecting permits and, as a result, terminated the Secretary's authority to grant extensions of outstanding coal prospecting permits, subject only to "valid existing rights."

Appellant asserts that the decision appealed from is in error because (1) a permittee had a contract with the Government which would give him an extension if he performed certain activities on the permit; (2) that permittees were led to believe that an extension would be automatic if the permittee met the terms of the contract; (3) that later legislation cannot change the terms of the contract; and (4) that the Departmental moratorium suspending activity of coal

prospecting permits prevent the permittee from taking action to preserve its rights.

This Board has recently considered in two decisions the issues raised by appellant and decided them adversely to him. Island Creek Coal Co., 35 IBLA 247 (1978); Peabody Coal Co., 34 IBLA 139 (1978). These cases establish that:

[1] Section 4 of the Federal Coal Leasing Amendments Act of 1975, removed the authority of the Secretary to grant extensions of coal prospecting permits, subject to valid existing rights, and it applies to applications for permit extensions pending at the time the law was enacted by Congress. Such pending applications are not valid existing rights under section 4 of the 1975 Amendments Act because the authority to grant coal prospecting permit extensions was discretionary with the Secretary.

[2] The Federal coal program was substantially revised in 1975 by the Secretary in proper exercise of his discretion. The Bureau of Land Management did not act in an arbitrary and capricious manner when, under the new coal policy, it suspended applications for coal prospecting permit extensions and the applications were eventually rejected because the Federal Coal Leasing Amendments Act of 1975 removed the authority to grant coal prospecting permit extensions. A program pursued for a period of time under a statutory grant of discretionary authority may be reviewed and revised at any time provided it is not done in an arbitrary manner and is done within the authority granted by Congress.

These rulings dispose of appellant's contentions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

